AN ENTREPRENEUR'S BEST FRIEND: THE U.S. GSP PROGRAM AND ITS POSITIVE IMPACT ON SMALL BUSINESSES

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Small businesses face obstacles constantly as they try to remain competitive in their respective industries. With the recent renewal of the U.S. Generalized System of Preferences, a program which allows for certain products from certain countries to be imported into the United States duty-free, small businesses across the country should take note. The U.S. GSP Program can be beneficial to U.S. small businesses in three ways. First, the program can allow small businesses to import eligible materials at a lower cost, which can enable them to establish a competitive advantage. Second, because small businesses can save money on specific imports through utilizing the program, they can potentially use the money saved on importing to pursue international expansion if desired. Finally, for the U.S. small business CEO who does not see the benefits of international expansion, the U.S. GSP Program can encourage internationalization by alleviating the fears of a small business CEO who has little international exposure.

I. INTRODUCTION

With the recent two-year renewal of the U.S. Generalized System of Preferences,[1] small businesses across the United States are able to breathe a sigh of relief.[2] Small businesses, which are often burdened by limited resources, must be creative in order to remain competitive in industries in which large companies maintain a strong presence. The U.S.

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1 *Ambassador Schwab Announces Process to Respond to Congressional Changes to GSP Program* (Dec. 20, 2006), available at http://www.ustr.gov/Document_Library/Section_Index.html (last visited Sept. 14, 2007) [hereinafter *Ambassador Schwab*].

2 *Estimated Impacts of the U.S. Generalized System of Preferences to U.S. Industry and Consumers*, U.S. Chamber of Commerce, October 2006, 1-20, http://www.uschamber.com/NR/rdonlyres/eebqrpxprbqo7v7bgplqjj6w66tcho3ut3uheqnpyuh5dyn2oujd6y225grbpaw22qm3c2dixxczyj32rs5rask4oyc/0610gsp_report.pdf [hereinafter *Estimated Impacts of GSP*].

GSP program is one such tool that the small business CEO can use in order to make the most of his business's limited resources. Undoubtedly, this preferences program has provided a great benefit to large multinational corporations; however, this Note will focus on the impact of this program on U.S. small businesses. First, this Note will examine how the "Generalized System of Preferences" ("GSP"), the general model, fits into international trade law. Second, this Note will discuss the background of the U.S. GSP program—what it is and how it works—followed by a discussion of the current status of the U.S. GSP program. Third, this Note will highlight examples of U.S. small businesses that have benefited, firsthand, from the U.S. GSP program and will present figures regarding how particular U.S. industries, themselves, have benefited from this program. Finally, after a discussion of the traditional market entry strategies and the challenges that confront small businesses, this Note will address how the U.S. GSP program can potentially encourage U.S. small businesses to expand internationally.

II. HOW THE GENERALIZED SYSTEM OF PREFERENCES FITS WITHIN THE FRAMEWORK OF INTERNATIONAL TRADE LAW

In order for the small business CEO to be able to appreciate the U.S. GSP program, it is necessary to understand how it fits into the greater scheme of international trade law. First, the General Agreement on Tariffs and Trade ("GATT") is an international organization that "has provided the legal framework within which most international trade between DCs [developing countries] and ICs [industrialized countries] has occurred."[3] One of the key aspects of GATT is the "Most-Favored-Nation principle"[4] ("MFN"), which "imposes on the signatory countries the obligation to grant to each other equality of treatment and to apply tariffs and other similar regulatory measures unconditionally and automatically on a nondiscriminatory basis."[5] In other words, MFN mandates a policy of nondiscrimination in the sense that if one country (e.g., Country A) wants to grant a tariff preference to another country (e.g., Country B); it can not do so unless it also makes that same tariff preference available to other countries (e.g., Countries C, D, and E).

Second, the "Generalized System of Preferences" is the generic preferences program model, which made its first "formal" appearance at the United Nations Conference on Trade and Development ("UNCTAD") in

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[3] Ndiva Kofele-Kale, *The Principle of Preferential Treatment in the Law of GATT: Toward Achieving the Objective of an Equitable World Trading System*, 18 CAL. W. INT'L L.J. 291, 294 (1987/88).
[4] *Id.* at 296.
[5] *Id.* at 296-97.

1964.[6] The United States, as well as many other nations,[7] has its own version of the GSP program (the "U.S. GSP") which was implemented in 1976.[8] On the surface it appears that the MFN principle in GATT does not allow for the existence of preference programs. However, it is clear that the GSP program (and therefore each country-specific implementation) has a special place within the framework of international trade law, especially within the framework of GATT.[9] Initially, "the GATT members waived the MFN requirement for ten years."[10] However, a permanent solution was needed at the end of this ten-year period; thus in 1979 the "Enabling Clause" was implemented.[11] "The Enabling Clause permits preferential treatment for developing countries '[n]otwithstanding the provisions of Article I of the General Agreement.'"[12] If there were any doubt as to the legitimacy of the place of the GSP program within international trade law, the following statement from Kele Onyejekwe's article on the topic of trade preferences helps to dispel those concerns:

> With respect to its legal status, preferential treatment of developing countries according to development needs has evolved from an optional standard of international economic law to a general principle of international economic law, if not international law in general. Certainly, it is a fundamental principle of international development law. The principle is manifest in a number of fields of international economic and development law, but it has reached its highest significance in international trade law. [13]

Therefore, it is convincing that the GSP program, as an example of a "preferential treatment" program, is firmly placed within the greater scheme of GATT. It can be viewed as an exception to the MFN requirement and

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[6] Thomas R. Graham, *The U.S. Generalized System of Preferences for Developing Countries: International Innovation and the Art of the Possible*, 72 AM. J. INT'L L. 513, 514 (1978).
[7] *Id.* at 520.
[8] *U.S. Generalized System of Preferences Guidebook*, 3, Office of the United States Trade Representative Executive Office of the President, January 2006, http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file890_8359.pdf [hereinafter *GSP Guidebook*].
[9] Kele Onyejekwe, *International Law of Trade Preferences: Emanations from the European Union and the United States*, 26 ST. MARY'S L.J. 425, 441-55 (1995); *contra* Ndiva Kofele-Kale, *The Principle of Preferential Treatment in the Law of GATT: Toward Achieving the Objective of an Equitable World Trading System*, 18 CAL. W. INT'L L.J. 291, 297-324 (1987/88).
[10] Amy M. Mason, *The Degeneralization of the Generalized System of Preferences (GSP): Questioning the Legitimacy of the U.S. GSP*, 54 DUKE L.J. 513, 519 (2004).
[11] *Id.* at 520.
[12] *Id.*
[13] Onyejekwe, *supra* note 9, at 443.

derives its legitimacy from the recognition that developing and least-developed countries have a special need for preferential treatment in order to be able to participate meaningfully in the international market.[14]

III. WHAT IS THE U.S. GENERALIZED SYSTEM OF PREFERENCES?

The U.S. GSP program, which is "chaired by the Office of the U.S. Trade Representative,"[15] is a program that grants "duty-free treatment"[16] for certain "eligible articles"[17] that are imported into the United States from certain developing and least-developed countries.[18] As the CRS report for Congress states, "[c]urrently more than 4,600 products from over 140 BDCs [beneficiary developing countries] are eligible for duty-free treatment under [U.S.] GSP and another 1,783 product categories [are] eligible for duty-free treatment to least developed countries."[19] The primary goal of the program is "to promote economic development in developing countries through increased trade . . . [by] giv[ing] preferential tariff treatment to developing countries until their exporters are able to compete on world markets with normal, nonpreferential tariffs."[20] The U.S. GSP program has been receiving regular reauthorization by the President and Congress since its original implementation on January 1, 1976.[21] On December 20, 2006 it was renewed for a two-year period.[22]

Overall, it is important for small business CEOs to understand what the U.S. GSP program entails so that they can take advantage of this program. By knowing what countries and products qualify for the program, the small business CEO can incorporate U.S. GSP into business operations.

A. *Technicalities of the U.S. Generalized System of Preferences:*

The following briefly discusses the technicalities of the program by describing: (1) the President's authority over the program, (2) criteria to determine beneficiary countries, and (3) criteria to determine eligible products.

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[14] *Id.* at 434-454.
[15] William H. Cooper, *CRS Report for Congress, Generalized System of Preferences*, CRS-2, Updated March 30, 2006, http://www.nationalaglawcenter.org/assets/crs/97-389.pdf [hereinafter *CRS Report*].
[16] *Id. See also* GSP Guidebook, *supra* note 8.
[17] 19 U.S.C. § 2463 (2006).
[18] CRS Report, *supra* note 15.
[19] *Id.*
[20] *Id.* at CRS-1.
[21] CRS Report, *supra* note 15, at CRS-2 n.3; *see also* GSP Guidebook, *supra* note 8, at 3.
[22] Ambassador Schwab, *supra* note 1.

1. *Authority Granting Presidential Power Over U.S. GSP Program*

As stated in legislation, the President has the power to administer this preferences program:

> The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—
> (1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;
> (2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;
> (3) the anticipated impact of such action on United States producers of like or directly competitive products; and
> (4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.[23]

2. *Criteria to Determine Beneficiary Countries*

In exercising his authority, the President considers a variety of factors when deciding if a particular country qualifies as a "beneficiary developing country" and is therefore eligible for the U.S. GSP program.[24] A "beneficiary developing countr[y]" under the U.S. GSP program is simply a country that has been granted permission by the President to receive the benefits of U.S. GSP duty-free treatment.[25] However, a "beneficiary developing country" can be further designated as a "least-developed beneficiary developing country" if the President deems that the country meets certain other "considerations."[26] Prior to the President exercising his discretion, certain criteria automatically prevent a country from being named a beneficiary of the U.S. GSP program.[27] First, there are a number of countries which the President is not permitted to "designate" as "beneficiary developing countries."[28] These countries include Australia, Canada, European Union member states, Iceland, Japan, Monaco, New Zealand, Norway, and Switzerland.[29] Second, if a country exhibits

[23] 19 U.S.C. § 2461 (2006).
[24] 19 U.S.C. § 2462 (2006).
[25] 19 U.S.C. §§ 2461-62 (2006).
[26] 19 U.S.C. § 2462 (2006).
[27] *Id.*
[28] *Id.*
[29] 19 U.S.C. § 2462(b)(1) (2006).

forbidden characteristics at the time of application, that country will be disqualified from obtaining U.S. GSP beneficiary status altogether.[30] Therefore, if a country passes the first two steps of (1) not being a named country on the list of "ineligible" countries and (2) not exhibiting any of the forbidden criteria, then that country will be considered by the President for potential "beneficiary" status. The President is required to consider a list of factors when making a final determination regarding a country's status as a U.S. GSP program "beneficiary."[31] Currently there are many countries

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[30] GSP Guidebook, *supra* note 8, at 19. Below are the criteria for becoming a US GSP beneficiary:

(1) A [U.S.] GSP beneficiary may not be a Communist country, unless such country receives Normal Trade Relations (NTR) treatment, is a WTO member and a member of the International Monetary Fund (IMF), and is not dominated by international communism;
(2) A [U.S.] GSP beneficiary may not be a party to an arrangement of countries nor participate in actions the effect of which are (a) to withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level and (b) to cause serious disruption of the world economy;
(3) A [U.S.] GSP beneficiary may not afford preferential treatment to products of a developed country that has, or is likely to have, a significant adverse effect on United States commerce;
(4) A beneficiary may not have nationalized, expropriated or otherwise seized property of U.S. citizens or corporations without providing, or taking steps to provide, prompt, adequate, and effective compensation, or submitting such issues to a mutually agreed forum for arbitration;
(5) A [U.S.] GSP beneficiary may not have failed to recognize or enforce arbitral awards in favor of U.S. citizens or corporations;
(6) A [U.S.] GSP beneficiary may not aid or abet, by granting sanctuary from prosecution, any individual or group that has committed an act of international terrorism;
(7) A [U.S.] GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights, including 1) the right of association, 2) the right to organize and bargain collectively, 3) freedom from compulsory labor, 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health; and
(8) A [U.S.] GSP beneficiary must implement any commitments it makes to eliminate the worst forms of child labor.

19 U.S.C. § 2462(b)(2) (2006).

[31] GSP Guidebook *supra* note 8, at 20. Below are the criteria the President must consider when designating a US GSP beneficiary:

(1) An expression by a country of its desire to be designated as a [U.S.] GSP beneficiary country;

which are "GSP-Eligible Beneficiaries,"[32] meaning that the small business CEO will have many options when using the U.S. GSP program to establish

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> (2) [T]he level of economic development, including per capita GNP, the living standards of its inhabitants, and any other economic factors that the President deems appropriate;
> (3) [W]hether or not other major developed countries are extending generalized preferential tariff treatment to such country;
> (4) [T]he extent to which such country has assured the United States that it will provide equitable and reasonable access to its markets and basic commodity resources and the extent to which it has assured the United States it will refrain from engaging in unreasonable export practices;
> (5) [T]he extent to which such country provides adequate and effective protection of intellectual property rights, including patents, trademarks, and copyrights;
> (6) [T]he extent to which such country has taken action to reduce trade distorting investment practices and policies, including export performance requirements, and to reduce or eliminate barriers to trade in services; and
> (7) [W]hether such country has taken or is taking steps to afford internationally recognized worker rights, including 1) the right of association, 2) the right to organize and bargain collectively, 3) freedom from compulsory labor, 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

19 USC § 2462(c) (2006).

[32] GSP Guidebook, *supra* note 8 at 16-18 (The GSP Guidebook separates the beneficiary countries into four different categories—(1) Independent countries, (2) Non-independent countries and territories, (3) Least-developed beneficiary developing countries, and (4) Associations of countries." The eligible GSP beneficiaries are listed according to category below:

> **Independent Countries:** The following independent countries are GSP-eligible beneficiaries (BDCs): Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, Bangladesh, Belize, Benin, Bhutan, Bolivia, Bosnia and Hercegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Columbia, Comoros, Congo (Brazzaville), Congo (Kinshasa), Costa Rica, Côte d'Ivoire, Croatia, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, The Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Former Macedonia, Republic of Yugoslav, Madagascar, Malawi, Mali, Mauritania, Mauritius, Moldova, Mongolia, Morocco, Mozambique, Namibia, Nepal, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Romania, Russia, Rwanda, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tomé and Principe, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Solomon Islands, Somalia,

business contacts overseas or when using the program to import certain items from foreign suppliers.

3. *Criteria to Determine Products Which are Eligible for the U.S. Generalized System of Preferences*

a. Presidential Power

South Africa, Sri Lanka, Suriname, Swaziland, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Uruguay, Uzbekistan, Vanuatu, Venezuela, Republic of Yemen, Zambia, Zimbabwe;
Non-independent Countries: The following non-independent countries and territories are GSP-eligible beneficiaries: Anguilla, British Indian Ocean Territory, Christmas Island (Australia), Cocos (Keeling) Islands, Cook Islands, Falkland Islands (Islas Malvinas), Gibraltar, Heard Island and McDonald Islands, Montserrat, Niue, Norfolk Island, Pitcairn Islands, Saint Helena, Tokelau, Turks and Caicos Islands, British Virgin Islands, Wallis and Futuna, West Bank and Gaza Strip, Western Sahara;
Least-developed beneficiary developing countries: The least-developed beneficiary developing countries (LDBDCs) are as follows: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Congo (Kinshasa), Djibouti, Equatorial Guinea, Ethiopia, The Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tomé and Principe, Sierra Leone, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Republic of Yemen, Zambia;
Associations of countries (treated as one country for GSP rule-of-origin requirements):
<u>Member Countries of the Cartagena Agreement (Andean Group):</u> Bolivia, Columbia, Ecuador, Peru, Venezuela;
<u>Member Countries of the West African Economic and Monetary Union (WAEMU):</u> Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, Togo;
<u>Qualifying Member Countries of the Association of South East Asian Nations (ASEAN):</u> Cambodia, Indonesia, Philippines, Thailand;
<u>Qualifying Member Countries of the South Asian Association for Regional Cooperation (SAARC):</u> Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka;
<u>Qualifying Member Countries of the Southern Africa Development Community (SADC):</u> Botswana, Mauritius, Tanzania;
<u>Member Countries of the Caribbean Common Market (CARICOM), except The Bahamas</u>: Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

Beyond having the authority to determine the *countries* that are eligible for the U.S. GSP program, the President also has the power to determine which *products* from these countries are suitable for the program.[33] The President can: (1) "designate articles as eligible articles from all beneficiary developing countries" and (2) "designate articles as eligible articles only for countries designated as least-developed beneficiary developing countries."[34] In other words, there may be certain products which qualify for U.S. GSP duty-free treatment from *least-developed* countries but those same products from *developing* countries may not qualify.[35] Overall, common examples of the types of products which qualify for U.S. GSP treatment are raw materials and chemical compounds, food items, and mechanical parts—in other words "manufactures" and "semi-manufactures."[36] For purposes of illustration, Figure 1 presents data from 2005 on the variety of GSP products imported to the U.S.

Figure 1[37]

Leading Product Groups Imported Duty-Free Under GSP, 2005

(Millions and Percent)

Products	Value	Share of Total GSP Imports	Value of Duties Saved
Oils and petroleum products	$5,848.3	21.9%	$11.1
Jewelry and parts	3,584.8	13.4	202.5
Electrical equipment and parts	2,224.4	8.3	75.9
Transportation equipment parts	1,617.4	6.0	40.6
Plastics and plastic products	1,350.2	5.0	65.9
Agricultural and food products (excl. sugar)	1,017.8	3.8	67.5
Wood and wood products	921.8	3.4	47.4

[33] 19 U.S.C. § 2463 (2006).

[34] 19 U.S.C. § 2463(A) and (B) (2006).

[35] The Trade Partnership, *The U.S. Generalized System of Preferences Program: An Update*, 6, http://www.tradepartnership.com/pdf_files/2006_GSP_update.pdf [hereinafter *U.S. GSP Program Update*].

[36] *Id.* at 9. For a list of "products eligible for GSP treatment from all beneficiary developing countries," *see* http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file403_8099.pdf. For a list of "products eligible for GSP treatment from least developed beneficiary countries," *see* http://www.ustr.gov/assets/Trade_Development/Preference_Programs/GSP/asset_upload_file921_8098.pdf.

[37] U.S. GSP Program Update, *supra* note 35, at 10.

Organic chemicals	913.8	3.4	42.7
Machinery (including computers), parts	907.2	3.4	26.3
Aluminum mill products	791.6	3.0	26.9
Iron and steel raw materials	668.8	2.5	23.9
Rubber products	619.5	2.3	21.3
Iron and steel products	584.3	2.2	21.7
Sugar	442.5	1.7	32.2
Leather products	312.6	1.2	8.8
Furniture and parts	32.3	0.1	2.3
Total, Leading Products	21,837.3	81.6	717.0
Total, All GSP Products	$26,747.1	100.0%	$923.3

b. Technical Aspects:

Legislation requires that certain technical elements be adhered to when determining product eligibility. One example is the "rule of origin" requirement, which calls for the following:[38]

> (2) Rule of origin
>
> (A) General rule
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> The duty-free treatment . . . shall apply to any eligible article which is the growth, product, or manufacture of a beneficiary developing country if—
>
> (i) that article is imported directly from a beneficiary developing country into the customs territory of the United States; and
>
> (ii) the sum of—
>
> I. the cost or value of the materials produced in the beneficiary developing country or any two or more such countries that are members of the same association of countries and are treated as one country under section 2467(2) of this title, plus
>
> II. the direct costs of processing operations performed in such

[38] 19 U.S.C. § 2463 (2006).

beneficiary developing country or such member countries,

is not less than 35 percent of the appraised value of such article at the time it is entered.

(B) Exclusions

An article shall not be treated as the growth, product, or manufacture of a beneficiary developing country by virtue of having merely undergone—

(i) simple combining or packaging operations, or

(ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.[39]

Beyond the rule of origin requirement, there are other restrictions which determine product eligibility. For example, certain types of articles can not obtain U.S. GSP status. These include "import-sensitive articles," "articles against which other actions taken" and "agricultural products."[40] Another restriction is the "competitive need limitation." The competitive need limitation[41] acts as a check on the products which are given preferential treatment by the United States. Basically, upon finding that a certain product, which currently receives U.S. GSP treatment, no longer needs that treatment, the President will "terminate the duty-free treatment for that article."[42]

B. *Current Update of the U.S. Generalized System of Preferences*

The last piece of legislation which renewed the U.S. GSP program originally was set to expire on December 31, 2006.[43] However, on December 20, 2006, "President Bush signed legislation that continues the [U.S.] Generalized System of Preferences ([U.S.] GSP) program for two years until December 31, 2008."[44] This new legislation allows "all current beneficiaries" to continue to benefit from U.S. GSP treatment.[45] However, it provides a new test[46] for determining when products "have reached a

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[39] *Id.*

[40] *Id.* (For a complete description of the types of articles which can not obtain U.S. GSP program status *see* 19 U.S.C. § 2463(b)).

[41] *Id.* (For a complete description of the 'competitive need limitation' see 19 U.S.C. § 2463(c)(2)).

[42] 19 U.S.C. § 2463 (2006); *see also* U.S. GSP Program Update, *supra* note 35, at 11.

[43] CRS Report, *supra* note 15, at CRS-2 n.3.

[44] Ambassador Schwab, *supra* note 1.

[45] *Id.*

[46] Ambassador Schwab, *supra* note 1 ("The current GSP statute includes two 'competitive need limitations (CNLs)' on the eligibility of a product for benefits under GSP: (i) if the annual trade of a product from a specific country exceeds a monetary

level of competitiveness suggesting that they no longer warrant duty-free benefits," so that countries and products are not receiving a "CNL waiver" unnecessarily.[47]

It is a positive step that the U.S. GSP program has been continued for the next two years. As Ambassador Susan C. Schwab stated,

> The [U.S.] GSP program has proven to be very successful in creating U.S. trade with and development in developing countries . . . Congress provided new guidance to address product competitiveness when it extended the program. We will ensure that the program adapts so that it continues to assist developing countries in becoming more active participants in the global trading system.[48]

The impact of the U.S. GSP program on the international marketplace will become clearer over time. However, at least for the next two years, the U.S. GSP program should continue to provide benefits to developing, least-developed countries, and U.S. small businesses alike.

IV. THE EFFECT OF THE U.S. GENERALIZED SYSTEM OF PREFERENCES ON U.S. SMALL BUSINESSES

Though the purpose of the U.S. GSP program (as a country-specific implementation of the general GSP model) is to enable developing and least-developed countries to become more competitive and more active participants in international trade, the program also has a positive impact on U.S. small businesses.[49] The following small business success stories illustrate the positive impact that the U.S. GSP program has already had on U.S. small businesses in a variety of industries.

A. *U.S. Small Business Success Story—Con-Tech International as an Example of How a Steel Product Supplier Benefits from the U.S. Generalized System of Preferences*

Con-Tech International ("Con-Tech") is a steel product importer and distributor which supplies a variety of steel products.[50] The benefits

threshold ($125 million in 2006); or (ii) if the annual trade of a product from a specific country exceeds 50 percent of total U.S. imports of that product. The statute also authorizes the President to grant a waiver to the limitations if certain statutory conditions are met. The legislation signed today [December 20, 2006] amends the statute to provide that the President should revoke any existing CNL waiver that has been in effect for at least five years, if a GSP-eligible product from a specific country has an annual trade level in the previous calendar year that exceeds 150 percent of the annual trade cap or comprises 75 percent of all U.S.").

[47] Ambassador Schwab, *supra* note 1.

[48] *Id.*

[49] Estimated Impacts of GSP, *supra* note 2, at 1

[50] *Id.* at 12.

that Con-Tech receives from the U.S. GSP program are evident as "[U.S.] GSP allows Con-Tech to import drum closures from India and stamped steel discs from Brazil, and save duties of 2.6 percent and 2.9 percent, respectively."[51] Not only does U.S. GSP allow Con-Tech to save money on its imports, but it also affects Con-Tech's sales figures as "Con-Tech estimates that about 90 percent of its total sales, or $40 million annually, are made up of products imported under [U.S.] GSP."[52] Without the ability to import under this program, perhaps Con-Tech might not be as successful as it is today because it might not have access to the products that it has come to rely upon as it strives to provide "quality, service, and value" to its customers.[53]

Figure 2, below, illustrates the impact that the U.S. GSP program has had on the iron and steel industry. As the table indicates, the U.S. has imported a great amount of iron and steel materials through this program, the total value in 2005 being $1,253.1 million.[54] Benefits have also come in the form of tariff savings, as the steel industry saved a total of $45.6 million in tariffs throughout 2005.[55]

Figure 2[56]

U.S. Imports of Iron and Steel Under GSP, 2005

(Millions)

Products	Value	Tariff Savings	Top GSP Sources
Ferroalloys	$668.8	$23.9	South Africa, Kazakhstan, Russia
Other products of iron or steel	190.2	5.8	Brazil, India, Thailand
Consumer products	182.6	5.2	India, Thailand, Indonesia
Tubes or pipe fittings	128.0	6.7	India, Phillippines, Thailand
Screws, bolts, and springs	83.5	4.0	India, Thailand, Brazil
TOTAL	$1,253.1	$45.6	

[51] *Id.*
[52] *Id.*
[53] Con-Tech International, "Company," http://www.con-techinternational.com/company/index.htm.
[54] Estimated Impacts of GSP, *supra* note 2, at 11-12.
[55] *Id.* at 12.
[56] *Id.* at 11-12.

B. *U.S. Small Business Success Story—Liberty Woods International, Inc. as an Example of How a Lumber Supplier Benefits from the U.S. Generalized System of Preferences*

Liberty Woods International, Inc. ("Liberty Woods"), another small business, is a "hardwood plywood" supplier[57] located in Carlsbad, California, which has benefited greatly from the U.S. GSP program.[58] "Liberty Woods imports lumber duty free from Indonesia and Brazil under [U.S.] GSP, saving the company more than $2 million annually."[59] As a result of this program, it is probable that Liberty Woods is able to pass on the savings it receives to its customers.[60] Naturally, by saving money on the lumber that it imports as a result of U.S. GSP, Liberty Woods is able to use that money saved to improve upon its business operations as it seeks to carry out its mission of providing "consistent product quality, timely and attentive customer service, [the] highest level of customer satisfaction, reliable delivery information, rapid issue resolution, [and the] most complete transportation network."[61]

Figure 3 illustrates just how valuable the U.S. GSP program is to the importation of wood products into the United States. "In 2005, these imports reached more than $900 million."[62] Likewise, the positive impact of U.S. GSP can also be seen in the tariff savings which, in 2005, were greater than $47 million.[63] Drastic savings such as those highlighted in Figure 3 help to explain how a small business such as Liberty Woods is able to retain its status as "one of the largest importers of hardwood lumber into North America" despite the fact that it has just 30 employees at its corporate headquarters.[64]

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[57] Liberty Woods International, Inc. Home Page, http://www.libertywoods.com/index.htm [hereinafter *Liberty Woods Website*].
[58] Estimated Impacts of GSP, *supra* note 2, at 13.
[59] *Id.*
[60] *See id.*
[61] Liberty Woods International, Inc., "Mission Statement," http://www.libertywoods.com/missionStatement.html.
[62] Estimated Impacts of GSP, *supra* note 2, at 12.
[63] *Id.* at 13.
[64] *Id.*

Figure 3[65]

U.S. Imports of Wood and Wood Products Under GSP, 2005

(Millions)

Products	Value	Tariff Savings	Top GSP Sources
Particle board, fiberboard, plywood, veneer	$306.5	$24.0	Brazil, Indonesia, Ecuador
Other construction materials	300.4	11.4	Brazil, Indonesia, South Africa
Consumer products	201.2	7.3	Thailand, Indonesia, India
Other Products	81.1	3.6	Brazil, Indonesia, Thailand
Continuously-shaped wood	32.6	1.1	Brazil, Paraguay, Indonesia
TOTAL	$921.8	$47.4	

C. *U.S. Small Business Success Story—Piremag Corporation as an Example of How a Copper Magnet Wire Supplier Benefits from the U.S. Generalized System of Preferences*

Piremag Corporation, a small business which "is one of only four companies selling copper magnet wire in the U.S. market"[66] is a third example of a small business which has benefited from the U.S. GSP program. Piremag is able to offer "a high-quality product at a competitive price"[67] largely due to the fact that it "imports its wire duty-free from Brazil under [U.S.] GSP, saving its customers the 3.5 percent duty cost."[68]

Figure 4 illustrates the savings that importers of copper products, such as Piremag, are able to take advantage of as a result of using U.S. GSP. The program has proven to be a great resource for this small business as "the duty savings keep Piremag competitive and its doors open for business. Winners include not only its employees . . . but its hundreds of customers that have come to depend on Piremag to fill a niche in the magnet wire market for small- and medium-sized companies."[69]

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[65] *Id.*

[66] *Id.* at 17; *see also* Piremag Corp. Home Page, http://www.piremag.com/ [hereinafter *Piremag Website*].

[67] Estimated Impacts of GSP, *supra* note 2, at 17.

[68] *Id.*

[69] *Id.*

Figure 4[70]

U.S. Imports of Copper and Copper Products Under GSP, 2005

(Millions)

Products	Value	Tariff Savings	Top GSP Sources
Wire	$407.6	$12.0	Russia, Brazil, Turkey
Refined copper and alloys	133.8	0.5	Brazil, Kazakhstan, Uruguay
Consumer goods	50.6	1.5	Thailand, Turkey, Indonesia
Tubes, pipes, and fittings	34.9	0.9	Thailand, India, Serbia/Monten.
Bars, rods, and profiles	14.6	0.3	South Africa, Brazil, Turkey
Other copper products	12.1	0.2	India, Brazil, Serbia/Monten
TOTAL	$653.6	$15.5	

Ultimately, Con Tech International, Liberty Woods International, Inc., and Piremag Corporation are just a few examples of the many small businesses throughout the U.S. that have benefited from U.S. GSP. For small businesses that are not currently using the program, these success stories should serve as encouragement for the small business CEO to take the necessary steps to incorporate U.S. GSP into current business practices.

V. How the U.S. GSP Program Can Encourage U.S. Small Businesses to Expand Internationally

There are a variety of factors to consider when deciding to expand business operations internationally. There are even more factors to consider if you are a small business. However, before addressing the challenges that U.S. small businesses face, it is necessary to highlight the four market "participation strategies"[71] or "entry modes"[72] as they are also called, since these are the methods which are used by businesses to break into the international marketplace. The following gives a brief description of each.

[70] *Id.* at 18.

[71] John B. Cullen & K. Praveen Parboteeah, Multinational Management: A Strategic Approach 159-64 3d ed. (2005).

[72] Yigang Pan & David K. Tse, *The Hierarchical Model of Market Entry Modes*, 31 J. Int'l Bus. Stud. 535, 538 (2000) (Pan and Tse illustrate the "Hierarchical Model of Choice of Entry Modes" theory for conceptualizing the four entry modes of—"export," "contractual agreements," "equity joint venture," and "wholly owned subsidiary" and also describe two other competing theories.)

A. *The Four Participation Strategies*

1. *Exporting*

Exporting is defined as the "easiest"[73] of the participation strategies because it merely involves selling a product to a firm overseas, without all the risks that can be present in the other participation strategies.[74] Exporting can be "passive,"[75] which just like it sounds, requires minimal effort on the part of the local firm in order to get a sale, or exporting can be more "aggressive,"[76] such as when a local firm actively searches for a foreign buyer through utilizing the strategies of either indirect or direct exporting.[77]

Indirect exporting, which is an appealing option for smaller businesses, provides the user with "intermediary or go-between firms [which] provide the knowledge and contacts necessary to sell overseas."[78] Their purpose is to enable a firm to participate in the world market by providing the firm with varying levels of support (according to the type of intermediary) in order to make the export transaction a reality.[79] Direct exporting is different from indirect exporting in that it requires a greater commitment from the exporter.[80] Instead of hiring an intermediary to figure out all of the details of the export transaction, the exporter firm has control over everything.[81] The exporter firm exercises its control by using one of the methods of direct exporting.[82]

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[73] Cullen, *supra* note 71, at 159.
[74] U.S. Small Business Administration, *Small Business Guide to Exporting*, Chapter 3: Foreign Market Entry, http://www.sba.gov/gopher/Business-Development/International-Trade/Guide-To-Exporting/trad8.txt [hereinafter *Small Business Guide Chapter 3*].
[75] Cullen, *supra* note 71, at 159.
[76] *Id.* at 160.
[77] *Id. see also* Small Business Guide Chapter 3, *supra* note 74.
[78] Cullen, *supra* note 71, at 159.
[79] Small Business Guide Chapter 3, *supra* note 74 (The types of indirect export intermediaries are: "Commissioned Agents," "Export Management Companies (EMCs)," "Export Trading Companies (ETCs)," and "ETC Cooperatives." For a complete description of these types of indirect export intermediaries *see* http://www.sba.gov/gopher/Business-Development/International-Trade/Guide-To-Exporting/trad8.txt).
[80] *Id.*
[81] Cullen, *supra* note 71, at 160; *see also* Small Business Guide Chapter 3, *supra* note 74.
[82] Small Business Guide Chapter 3, *supra* note 74 (The methods of direct exporting are: "Sales Representatives/Agents," "Distributors," "Foreign Government Buying Agents," "Retail Sales," and "Direct Sales to End-Users." For a complete description of these methods of direct exporting *see* http://www.sba.gov/gopher/Business-Development/International-Trade/Guide-To-Exporting/trad8.txt).

2. *Contractual Agreements*

One of the types of contractual agreements is licensing.[83] "Licensing involves a contractual arrangement whereby a company licenses the rights to certain technological know-how, design and intellectual property to a foreign company in return for royalties or other kinds of payment."[84] A distinguishing aspect of licensing is that the licensor still retains ownership over this technological know-how, design and intellectual property.[85] Licensing is beneficial because it provides "rapid entry into foreign markets and virtually no capital requirements to establish manufacturing operations abroad."[86] However, "[t]he disadvantages of licensing are that control may be lost over manufacturing and marketing, and more important[ly], that the licensee may become a competitor if too much knowledge and know-how is transferred."[87]

3. *Equity Joint Ventures*

A joint venture is described as "an agreement by two or more companies to produce a product or service together."[88] The common participants in a joint venture relationship are: (1) a multinational corporation ("MNC") from one country and (2) a "local partner," from the host country.[89] The parties share ownership, "according to agreed-upon proportions of equity," meaning that the MNC and the local partner will experience the benefits and burdens of the business relationship.[90]

4. *Wholly Owned Subsidiary*

A wholly owned subsidiary is a type of foreign direct investment.[91] Foreign direct investment ("FDI") has been described as "the highest stage of internationalization."[92] FDI is the most risky of the participation strategies as it "means that a multinational company owns, in part or in

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[83] Helen Deresky, GLOBAL MANAGEMENT: STRATEGIC AND INTERPERSONAL, 181 (2002) (listing a description of the other types of contractual agreements such as "contract manufacturing," "turnkey operations," and "management contracts").
[84] *Small Business Guide to Exporting*, U.S. Small Business Administration, "Chapter 7: Strategic Alliances and Foreign Investment Opportunities," http://www.sba.gov/gopher/Business-Development/International-Trade/Guide-To-Exporting/trad12.txt.
[85] *See id.*
[86] *Id.*
[87] *Id.*
[88] Deresky, *supra* note 83.
[89] *Id.*
[90] *Id.*
[91] *See* Cullen, *supra* note 71, at 164-65.
[92] *Id.*

whole, an operation in another country."[93] There are two different ways to form a wholly owned subsidiary—through a "greenfield investment,"[94] or an "acquisition."[95] A greenfield investment involves "starting your own foreign company from scratch,"[96] while an acquisition involves "acquiring existing companies in another country."[97]

B. *Challenges U.S. Small Businesses Face When Expanding into a Foreign Market*

There are a few definitions of what constitutes a "small business." According to the United Nations, a small business is one which employs fewer than 500 people.[98] According to the media, a small business is one which employs fewer than 100 people.[99] Finally, according to the U.S. Small Business Administration, the definition of a small business depends on industry-specific calculations, which use 'sales revenue' and 'number of people' in order to determine what constitutes a small business in a particular industry.[100] Small businesses face unique challenges when trying to expand internationally.[101] Naturally, they often face restrictions—restrictions on the amount of financial resources that they have to explore potential international business endeavors; restrictions on the number of employees who are available to handle these international endeavors; and restrictions on the amount of "international experience" of upper level management.[102] The attitude towards international expansion exhibited by upper level management directly corresponds to whether a small business will expand internationally.[103] The following has been stated regarding the difference in attitudes of upper level management in large versus small businesses:

> Generally, increased international competition and exposure to international markets have forced larger companies, such as those in the automobile industry, to develop more global cultures. Survival made it necessary for top executives of all nationalities to respond to global competition. Smaller businesses, however, often ignore international opportunities because key decision makers

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[93] *Id.* at 164.
[94] *Id.* at 165.
[95] Deresky, *supra* note 83, at 182.
[96] Cullen, *supra* note 71, at 165.
[97] *Id.* at 164.
[98] *Id.* at 197.
[99] *Id.*
[100] *Id.*
[101] *See* Cullen *supra* note 71, at 202-03.
[102] *Id.*
[103] *Id.*

> and the culture of their organizations view competition only as domestic.[104]

Upper-level management with "limited international experience" often feel that expansion into the markets of other countries is not feasible because those markets "are just too different," too risky, or "too dangerous to the status quo."[105] Not every small business experiences these obstacles to foreign expansion to the same extent.[106] In fact, some small businesses are run by managers who are more familiar with international activities and who embrace the chance to expand globally.[107] However, it seems that the fears pertaining to international expansion plague small businesses more so than large multinational corporations.[108]

C. *U.S. Generalized System of Preferences and Implications on a Small Business's Ability to Expand Internationally*

The U.S. GSP program can positively impact a firm's ability to expand internationally. Besides reducing the costs associated with the importation of certain products, U.S. GSP can also benefit small businesses in two other ways. First, the savings that small businesses experience by using U.S. GSP can be redirected in order to be able to use the "participation strategies" to expand internationally, if desired.[109] Second, and perhaps more significant, U.S. GSP can alleviate the fears of small business managers who are hesitant to promote a "global culture" as a part of their business practices.

When expanding abroad, small businesses often use the participation strategies in a different manner than large companies.[110] There are typically two methods that small businesses choose from in order to implement one or more of the participation strategies—the "small-business stage model" and the "global start-up."[111] The small-business stage model is described as "an incremental approach to internationalization" whereby the small business starts out by using the technique of "passive exporting" and eventually moves on to more sophisticated international involvement.[112] Furthermore, the global start-up is described as a "[c]ompany that begins as

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[104] Cullen, *supra* note 71, at 203.
[105] *Id.*
[106] *Id.*
[107] *See id.*
[108] *Id.* at 197-207.
[109] *See* section IV of this Note for small business success stories illustrating how U.S. small businesses save money through the U.S. GSP program; *see also* Cullen, *supra* note 71, at 197-207 (stipulating that one of the challenges that small businesses face when trying to expand internationally is a lack of necessary financial resources).
[110] Cullen, *supra* note 71, at 198.
[111] *Id.*
[112] *Id.* (The stages are as follows: (1) passive exporting, (2) export management, (3) export department, (4) sales branches, (5) production abroad, and (6) the transnational.)

a multinational company" and is more of an immediate jump into a foreign market.[113] Naturally, a global start-up is characterized by higher risks.

Potentially, the U.S. GSP program can be especially helpful to small businesses that are looking to expand via the small-business stage model.[114] As previously mentioned, a big hindrance to the internationalization of small businesses is the small business CEO who fears the international marketplace.[115] Therefore, small business CEOs who are hesitant about foreign markets, due to lack of experience, turn to the small-business stage model in order to slowly gain confidence through the "incremental approach" and to "overcome initial skepticism regarding international markets."[116] U.S. GSP can both help remove this initial skepticism and in turn, add another dimension to the small-business stage model. The U.S. GSP program can remove fear or skepticism towards a foreign market by providing a small business with exposure to a foreign firm. Naturally, in order to utilize the U.S. GSP program, the small business would have to develop contact with a foreign firm, located in a U.S. GSP program eligible country. It's been stated that even something as simple as more familiarity with a foreign culture can affect how a small-business CEO views foreign market expansion. "Managers with little training in foreign languages and little international travel often resist internationalization. However, managers with previous international experiences, even just personal travel and sightseeing, have a greater propensity to recognize global opportunities. Often even a chance meeting during a foreign vacation can trigger an international small-business venture."[117]

Therefore, the U.S. GSP program has two positive implications. First, it provides U.S. small businesses with cheaper imports due to the duty-free status of certain products, and second it can enable a small business to become more familiar with a foreign market by virtue of importing from that foreign market. Since it has been suggested that something as simple as exposure to foreign travel can impact the attitude of a small business CEO, it is possible that exposure to a foreign market through utilization of the U.S. GSP program can give small business CEOs the confidence they need to pursue the other stages of the small-business stage model or the added financial resources to use the four participation strategies in general.

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[113] *Id.* at 198-204.

[114] *See* U.S. GSP Program Update, *supra* note 35, at "Executive Summary" (stating that the U.S. GSP program helps small businesses stay afloat); *see also* Cullen, *supra* note 71, at 198-99 (stating that small businesses often use the "small-business stage model" to slowly become acquainted with a foreign market).

[115] Cullen, *supra* note 71, at 202-05.

[116] *Id.* at 204.

[117] *Id.* at 203.

VI. CONCLUSION

It is evident that the U.S. GSP program not only provides benefits to developing and least-developed countries, but it also provides benefits to U.S. small businesses. Though small businesses experience obstacles which large businesses do not, U.S. small businesses can still be competitive with the large businesses in their industry. The U.S. GSP program levels the playing field. It gives small businesses a competitive edge—by facilitating the ability to provide a quality product at a low cost, and by providing a way for small business CEOs to become more acquainted with an international market so that any fears with regard to international expansion can be dispelled. For now, the U.S. GSP program has been continued for another two years—until December 31, 2008.[118] After this two-year period it will be up for renewal, at which time, Congress will have to decide if the U.S. GSP program will be renewed and if (or how) it will be changed.[119] For the time being, however, U.S. small businesses will, and should, continue to embrace the U.S. GSP program as they strive to find an edge in a competitive marketplace.

[118] Ambassador Schwab, *supra* note 1.

[119] *See* U.S. GSP Program Update, *supra* note 35, at 11.